IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.127 OF 2006
WITH
CIVIL APPLICTION NO.156 OF 2006

Ashwin Co-op.Hous.Society Ltd. ..Appellant.

V/s.

M/s.Bhadra Builders & Ors. ..Respondents.

Mr.Snehal Shah i/b Viraj Maniar & Association for appellant.

Mrs. Joglekar for BMC.

Mr.S.V.Rajeshwar for respondent No.1 and 13.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 21, 2006.

P.C. :

1. Heard. Admit.

2. Mr.Rajeshwar waives notice for the contesting respondent Nos.1 and 13 and Mrs.Joglekar waives notice for BMC.

3. As short question is involved, appeal is taken up for hearing forthwith by consent.

4. This appeal takes exception to the order passed by the trial Court refusing to grant ad-interim relief during the pendency of the Notice

Of Motion. The case of the appellants/plaintiffs is that the respondent builder had taken approval from the General Body of the Society with regard to the original plans submitted to the Corporation as back as in 1989. However, the respondent builder has now obtained sanction of amended plan on the basis of which, IOD has been issued in November, 2005 and on that basis construction activity is in progress on the site which is illegal. The case of the respondent builder, on the other hand, is that the amended plan does not affect any right of the plaintiffs society or its member, which would obligate the respondent builder to obtain prior permission of the society or members in that behalf.

5. At this stage of the proceedings, it is not necessary to dwell upon the rival contentions of the parties. The notice of motion is at ad-interim stage. Having regard to the fact situation of the present case, it is seen that the structure has come on the suit site up to about seven floors. The suit structure cannot be erected over night. If the plaintiffs have waited for so long, the respondents cannot be directed to stop further construction activities. But in the interest of justice and to adjust equities between the parties the appropriate

course to my mind is to pass the following order.

6. The respondent builder shall create third party interest in respect of the suit structure hereafter entirely at the risk of the respondents. Besides, the respondent builder shall notify to the prospective purchasers that the rights created in his or her favour will be subject to the outcome of the present proceedings and the said purchaser will have to abide by the directions to be passed by the court in the pending proceedings. Neither the respondent builder nor the prospective purchaser would be entitled to claim any equity, whatsoever, hereafter.

7. The trial Court shall decide the Notice of Motion expeditiously preferably within eight weeks from today. This direction is passed on the assurance given by both the parties through their counsel that pleadings will be completed not later than three weeks from today and rejoinder if any within one week from the date of service of reply affidavit of respondent. In any case, the pleadings shall be completed by the parties within four weeks, so as to facilitate the trial court to decide the Notice of Motion within eight weeks from today. Besides, parties assure through their counsel that no

request for adjournment on any count will be made before the trial court for hearing of this Notice of Motion whenever listed.

8. Agreement to be entered by the respondent builder with the prospective purchaser will contain clause as referred to above and the respondent builder will be obliged to disclose any transaction so effected within one week from the date of the transaction to the plaintiffs. In case the respondent builder has already entered any transaction with any other party with regard to the premises in the suit structure, details thereof, particularly, name of the purchaser, date of the agreement and the description of the premises which has been purchased by the said purchaser be made available to the appellants.

9. All issues pending in the proceedings before the trial court are left open to be decided on its own merits in accordance with the law.

10. Appeal as well as civil application disposed of on the above terms.